



Oregon Fish and Wildlife Commission Minutes

Meeting:
September 30, 2010 - 10:00 a.m.
Deschutes County Services Building
Board of Commissioners Room
1300 N.W. Wall Street, Suite 200
Bend, Oregon 97701-1960

Meeting:
October 1, 2010 - 8:00 a.m.
Deschutes County Services Building
Board of Commissioners Room
1300 N.W. Wall Street, Suite 200
Bend, Oregon 97701-1960

1
2 *Commission minutes are considered draft until approved by the*
3 *Commission at its next meeting.*
4

5 Notice of these meetings had been made by press release of statewide media
6 circulation. Those attending part or all of the meeting included:
7

8
9
10 Marla Rae, Chair
11 Dan Edge, Vice-Chair
12 Jon Englund, Commissioner
13 Skip Klarquist, Commissioner
14 Carter Kerns, Commissioner
15 Bobby Levy, Commissioner
16 Bob Webber, Commissioner

Roy Elicker, Director
Debbie Colbert, Deputy Director
Bill Cook, Assistant Attorney General
Teri Kucera, Executive Assistant

MEETING

11 On Thursday, September 30, 2010 at 10:00 a.m., Chair Marla Rae called the Oregon
12 Fish and Wildlife Commission (the Commission) meeting to order. She thanked the
13 Deschutes County Commission for use of their Commission Room.
14

DIRECTOR'S REPORT

16 **Field Reports** were submitted in written form for this meeting only.
17

Expenditure Report and Budget Update

18 Debbie Colbert, Deputy Director for Administration, referred to the *ODFW Monthly*
19 *Report for 2009-11 Biennium as of July 31, 2010*. She said Department-wide,
20 expenditures are all within projected values. She noted a number of adjustments
21 reflecting across-the-board reductions that occurred in June and October for all state
22 agencies. Counting the October 1 reductions, ODFW removed about \$1 million in
23 General Fund (GF). For October reductions, the Department proposes to close the Butte
24 Falls Hatchery in Medford, which has been in a reduced status since 2006. She noted
25 Attachment 2, *Sustainable Natural Resources = A Sustainable Oregon Economy*, and
26 said the graphs show Natural Resources (NR) agencies receive one-percent of total GF,
27 and expenditures have declined. This information will be valuable during the 2011
28 Legislative Session.
29

30
31 Chair Rae said the message we're trying to point out collectively is that Natural
32 Resources agencies in Oregon receive less than one percent total of the state's GF; that
33 includes the Departments of Agriculture, Environmental Quality, Forestry, Water
34 Resources, Oregon Watershed Enhancement Board, Department of Fish and Wildlife,
35 and State Lands. Yet, we contribute to the economic recovery of this state. We pointed

1 this out to legislators earlier. She said Director Roy Elicker had made the point that as
2 the future and the new reality rolls out, agencies would like to engage legislators in a
3 conversation about further GF cuts, prior to any of those fund sweeps that the
4 Legislature has engaged in during the past. Constituent groups that pay fees to ODFW
5 for habitat issues, restoration and enhancement, or additional hunting opportunities,
6 have become angry at us because they think their dedicated money is being used by
7 state government for general services. We've got no commitment that this will be
8 prevented in the future; we have a lot of work ahead of us. She said that Attachment 2
9 was cooperatively developed; this information is concisely presented. Deputy Director
10 Curt Melcher and his counterparts at other NR agencies have presented this to the
11 Legislature so they can see the bigger picture. She encouraged the Commission to carry
12 this document around and share it with folks when they give talks.

13
14 Director Elicker said this is the first biennium where legislators and the Governor's Office
15 have told us they are going to look at NR agencies as a whole. The Department has
16 four-percent GF (\$14 million) in its budget; but the biggest portion of that goes to fish
17 hatcheries and conservation strategy. We are told that legislators may ask us to give up
18 our share and move it to Water Resources, for example. He said it's getting to be a
19 critical question: how do we want to pay for Natural Resource management in Oregon?
20 We're not going to pay for it with GF. The Legislature will do whatever it takes to get
21 through this next session. We are lucky to we have hunting and fishing licenses. It will be
22 a very difficult session; staff will keep the Commission apprised.

23
24 Deputy Director Colbert added in terms of the 2011-13 Budget process, staff is waiting to
25 see the recommendations from Budget and Management. If we have any concerns
26 about those recommendations, we will be able to appeal. We are trying to do priority-
27 based budgeting, and hope the recommendations will be consistent with that.

28
29 Commissioner Kerns asked if the Department had been subject to any fund sweeps over
30 the last 18 months. Colbert said no; although in the 2009 Session they swept some of
31 our deferred maintenance funds (\$3 million), but put \$1.5 million back in. Commissioner
32 Kerns said the Commission should be apprised of those sweeps when they occur. Chair
33 Rae said we were informed; it was in a monthly expenditure report. Kerns didn't
34 remember, and asked to make sure that staff highlights and notes it.

35
36 Deputy Director Colbert referred to a memo, *RE: Revenue Update. See Sales of Select*
37 *Licenses and Tags in 2010*, and said staff is working to improve tracking of revenue as a
38 Department. The graphs on page 2 show the actual and projected revenues of 2009-11.

39
40 Director Elicker said Resident hunter sales are down 15%, largely due to sale of the
41 popular Juvenile Sports Pacs. Professional guides and packers have said nonresident
42 figures will probably get worse in the future; the Legislature increased the nonresident
43 fees over and above the recommendation of the Department. These are early numbers;
44 we will need a couple of years to better sort out these things. He added that several
45 other states, including Washington, plan to increase their fees.

46
47 Commissioner Edge was encouraged by the increased sales of Juvenile Sports Pacs.

1 Director Elicker said Oregon Hunters Association supported this; it was a great idea.
2 Chair Rae said this is good information and will help the regional offices and
3 headquarters in planning. She thanked Shirlene Gonzalez, Administration Administrator,
4 for this information. Director Elicker added this is the first time we've done this and
5 asked the Commission to provide staff with any feedback.

6
7 **Top Hunter Education Awards**

8 Chair Rae said the Top Hunter Education Awards would be presented at 11:30 a.m. She
9 moved to Adoption of Temporary Rules.

10
11 **Adopt Temporary Rules**

12 Roy Elicker, Director referred to the agenda starting with 635-041-0075 through 635-042-
13 0031. He asked the Commission to adopt the eight temporary rules.

14
15 **1. 635-041-0075**

16 **Treaty Indian Fall Commercial Gill Net Fishery in Columbia River Above Bonneville**
17 **Dam Continued**

18 Adopted September 9, 2010; effective September 10, 2010 through October 31, 2010.
19 This amended rule allows the commercial sales of fish caught during the Treaty Indian
20 fall commercial gill net fishery in the Columbia River above Bonneville Dam (Zone 6).
21 Rule modifications extend the current fishery by 24-hours and authorizes a new 4.5 day
22 fishery which begins at 6:00 a.m. Monday, September 13 and runs through 6:00 p.m.
23 Friday, September 17, 2010. Modifications are consistent with action taken September 9,
24 2010 by the Columbia River Compact agencies of Oregon and Washington in concert
25 with the Columbia River treaty Tribes.

26
27 **2. 635-042-0145; 635-042-0160; 635-042-0170 and 635-042-0180**

28 **2010 Fall Commercial In-Season Modifications for Columbia River Select Area**
29 **Fisheries**

30 Adopted September 9, 2010; effective September 10, 2010 through October 31, 2010.
31 These amended rules prohibit the sales and/or retention of white sturgeon in all fall
32 Select Area commercial fisheries effective at 11:59 p.m. Saturday, September 11, 2010.
33 The fall Select Area fisheries modified include: Youngs Bay; Blind and Knappa sloughs;
34 Tongue Point/South Channel and Deep River.

35
36 **3. 635-023-0130**

37 **Columbia River Recreational Chinook Bag Limit Increased Between Warrior Rock**
38 **and Bonneville Dam**

39 Adopted September 20, 2010; effective September 22, 2010 through October 31, 2010.
40 This amended rule allows retention of one additional adult Chinook salmon beginning
41 September 22, 2010 and until further notice in the mainstem Columbia River recreational
42 fishery from Warrior Rock Lighthouse upstream to Bonneville Dam. The area
43 downstream from a line projected from Warrior Rock Lighthouse on the Oregon shore to
44 Red Buoy#4 to a marker on the lower end of Bachelor Island on the Washington shore
45 remains closed to Chinook retention (adults and jacks).

1 **4. 635-042-0031**

2 **Fall Commercial Drift Gill Net Seasons Set For September In Columbia River**
3 **Mainstem**

4 Adopted September 20, 2010; effective September 22, 2010 through October 31, 2010.
5 Amended rule implements fall commercial salmon drift gill net seasons in the Columbia
6 River mainstem in zones 4 and 5. Two commercial drift gill net fishing periods were
7 adopted. The fishing periods are: 8:00 p.m. Wednesday, September 22 to 6:00 a.m.
8 Thursday, September 23, 2010 (10 hours); and 8:00 p.m. Sunday, September 26 to 6:00
9 a.m. Monday, September 27, 2010 (10 hours).

10
11 **5. 635-017-0090**

12 **Coho Salmon Bag Limit Increased to Three Fish In Select Willamette Zone Streams**

13 Adopted September 21, 2010; effective September 23, 2010 through December 31,
14 2010.

15 Amended rule allows the sport harvest of three adipose fin-clipped Coho in the
16 Clackamas, Sandy, and Willamette (Section 1 only) rivers effective Thursday,
17 September 23, 2010. Rule modifications also allow the sport harvest of three Coho in the
18 Tualatin, Yamhill, Molalla, Santiam, and Willamette (Section 2 only) rivers effective
19 Thursday, September 23, 2010. These modifications allow sport anglers opportunities to
20 harvest substantial numbers of Coho that are returning to the Clackamas, Sandy and
21 Willamette rivers and tributaries above Willamette Falls.

22
23 **6. 635-004-0017**

24 **Directed Commercial Sardine Fishery Third Allocation Period Closes September 24,**
25 **2010**

26 Adopted September 22, 2010; effective September 24, 2010 through December 31,
27 2010.

28 This amended rule closes the third allocation period of the directed commercial sardine
29 fishery effective September 24 through December 31, 2010. These modifications
30 conform to federal rule changes announced September 22, 2010 to be published in the
31 Federal Register on September 27, 2010.

32
33 **7. 635-041-0075**

34 **Treaty Indian Fall Commercial Gill Net Fishery In Columbia River Above Bonneville**
35 **Dam Continues**

36 Adopted September 24, 2010; effective September 27, 2010 through October 31, 2010.

37 This amended rule allows the commercial sales of fish caught during the Treaty Indian
38 fall commercial gill net fishery in the Columbia River above Bonneville Dam (Zone 6).

39 Rule modifications authorize a new 2.5 day fishery which begins at 6:00 a.m. Monday,
40 September 27 and runs through 6:00 p.m. Wednesday, September 29, 2010.

41 Modifications are consistent with action taken September 24, 2010 by the Columbia
42 River Compact agencies of Oregon and Washington in concert with the Columbia River
43 treaty Tribes.

44
45 **8. 635-042-0031**

46 **Previously Authorized Commercial Fishing Period for Zones 4 and 5 of the**
47 **Columbia River Rescinded**

1 Adopted September 24, 2010; effective September 24, 2010 through October 31, 2010.
2 Amended rule rescinds a previously authorized fishing period in the fall non-Indian
3 commercial season for Chinook salmon and white sturgeon in zones 4 and 5 of the
4 Columbia River. The rescinded fishing period was to have been from 8:00 p.m. Sunday,
5 September 26 to 6:00 a.m. Monday, September 27, 2010 (10 hours). Modifications are
6 consistent with the action taken September 24, 2010 by the Columbia River Compact
7 agencies of Oregon and Washington.

8
9 *Action: Commissioner Englund moved to approve the eight administrative*
10 *temporary rules. Commissioner Webber seconded the motion, and the motion*
11 *carried unanimously.*

12
13 Chair Rae asked Brian Fahlgren to come forward for Public Forum.

14
15 **Public Forum:**

Brian Fahlgren Terrebonne, OR	Brian Fahlgren expressed concerns about activities of ODFW concerning contracts, and was curious about the <u>confidentiality</u> rule the Commission enacted for mediation starting July 1 through December 26. He also discussed a particular contract funded with Go Oregon funds and raised questions about legal sufficiency. Chair Rae said the Public Forum is an opportunity to talk to the Commission on an issue not on the agenda; therefore, we have no authority to take any action today. She asked Fahlgren to visit with Deputy Director Colbert about his specific contract issue. About the mediation confidentiality rules, Chair Rae said the rule is the same as adopted by every state agency, pursuant to the State Administrative Procedures Act. It allows statements made in the attempt to settle lawsuits to not be subject to immediate disclosure, so as to protect your rights and the rights of the state, in the event the matter cannot be settled.
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16
17 **Exhibit A: Commission Minutes**

18 Chair Rae asked the Commission for any edits to the July 16 and August 6, 2010
19 Commission minutes. She said Deputy Director Melcher had a few spelling changes.
20 For July 16 minutes, on page 14, third paragraph, line 3, change “conservation” to
21 “conservative”. In fifth paragraph, line 10, change “Maine” to “Marine”. For August 6
22 minutes, page 29, lines 12 and 25, change “Beal” to “Buell”.

23
24 *Action: Commissioner Edge moved to adopt the July 16 and August 6, 2010*
25 *Commission minutes as revised. Commissioner Levy seconded the motion, and*
26 *the motion carried unanimously.*

27
28 **Exhibit B: 2011 Oregon Big Game Regulations**

1 Chair Rae said State Ethics Law requires any Commissioner to declare a potential
2 conflict of interest but it does not prevent us from discussing or voting on the issue.

3
4 **Chair Rae declared a potential conflict of interest as her mother is registered in the**
5 **Landowner Preference Program (LOP). Commissioner Kerns said he similarly had**
6 **a potential conflict of interest because he is enrolled in the LOP. Commissioner**
7 **Levy said she similarly has a potential conflict of interest as her husband and**
8 **family are registered in the LOP.**

9
10 Tom Thornton, Game Program Manager, gave a slide presentation focusing on changes
11 to June recommendations, including weapons regulations and a few species highlights.
12 Regarding Landowner Preference proposals, there are two changes to clarify existing
13 OARs: 1) replace “antlerless deer” with “600 Series”; and 2) add “registered” to rule
14 language.

15
16 Thornton gave background on the Archery Equipment Technology Advisory Committee
17 (AETAC) meeting held in June. The group focused on mechanical broad heads and the
18 use of electronic devices on bows and arrows. They categorized equipment as to
19 whether they were a hunting advantage. The group decided not to change the archery
20 equipment regulations. He said the reasoning was anything that increases the success
21 rate shortens the season. Taking the group’s recommendations into consideration, the
22 Department proposes allowing the use of both lighted nocks and cameras, and allowing
23 the use of crossbows for hunters with permanent physical disabilities. Medical
24 documentation would be required for a special use permit. He said regarding rifle hunts,
25 we are proposing to allow bows in rifle hunts for deer, elk, and pronghorn.

26
27 Thornton discussed Hunt Changes and Auction Tags for 2011.

- 28 • Tag numbers for spring bear and the 2011 cougar quotas have been prepared for
29 adoption. The proposed number of spring bear tags remains unchanged at 8,376.
- 30 • Some changes have been proposed for deer hunts, including a new California
31 bighorn hunt in Potamus Creek.
- 32 • Deer: new white-tail on John Day River.
- 33 • Elk: just shuffling hunts due to damage; add 19 new hunts.
- 34 • Proposal for new Youth Hunt in Wilson Unit.
- 35 • 2011 Auction Tags: to be determined at the October Access & Habitat Board; they
36 will select a replacement group.
- 37 • 2011 Raffle Tags: all will be drawn at OHA Annual convention.

38
39 Thornton discussed changes to the packet since it was sent to Commission:

- 40 • Proposed clarification of Melrose/Powers Unit boundary;
- 41 • Proposed area regulation changes;
- 42 • Proposed controlled elk hunt change; and
- 43 • Wendling TMA proposal

44
45 Commissioner Levy asked about permanent disability specific to crossbow. Do they
46 need a doctor’s release every year or will just reporting to it once be sufficient? Thornton

1 said it is considered a permanent disability. At the most, a doctor's release would be
 2 required every other year. Commissioner Levy said she met some people who have
 3 disabled stickers in their cars. They can't walk a certain distance, but they've asked to
 4 hunt. Do they have to come back every year to get a license? Thornton said no, that's on
 5 an every other year basis. One concern with the prior system was that we didn't know if
 6 people in the system were active or not; there were also concerns for abuse.

8 Chair Rae asked about the area closures in implementing the new Forest Service Motor
 9 Vehicle Use Plans. What is our process for getting those areas more widely known?
 10 Thornton said that is primarily happening at the regional forest level. Our concern is that
 11 the hunters didn't get caught in that transition year. We've also worked at the state level
 12 with the Forest Service, and are getting onto the same page.

14 Chair Rae said the Commission received a lot of written testimony from people who are
 15 upset about new closures and travel restrictions. It is important to note that nearly all of
 16 those are due to closures by landowners due to fire closure, or motor vehicle restrictions
 17 based on Forest Service supervisors. We'll work with the Department's Information &
 18 Education staff and the new Hunters Access map to get this information out. Thornton
 19 said he could put an informational piece into the regulations.

21 Chair Rae invited public testimony. We will discuss cross bow and special use permit
 22 and technology issues. She said if you agree with the former speaker, say "me too".

24 **Public Testimony:**

<p>Dave Doran Bend, OR</p>	<p>Dave Doran, involved with bow hunting and archery for over 40 years, distributed written testimony and a CD titled, <i>North America Hunting Coalition – Adaptive Equipment for the Angling & Physically Challenged Bow Hunter</i>. He said there is adaptive bow hunting equipment available for disabled archery hunters that can be used without a crossbow. He believes the proposed changes to equipment regulations will have a detrimental effect on bow hunting's future. He said lighted nocks are not necessary. Cameras on bows further degrade the "no electronics attached to the bow or arrow" regulation. Crossbows are not archery equipment, and they are not easier to use than bows and arrows. He asked the Commission to not legitimize crossbows by allowing them as disabled equipment during archery season.</p> <p>Webber asked if Doran would object to the Commission legalizing crossbows during rifle season. Doran recommended that they be allowed.</p>
<p>Bob Kendall Hood River, OR</p>	<p>Bob Kendall, Oregon Bow Hunters (OBH) and a bow hunter for 30 years said he and his son recently participated in the Mt. Emily Archery Hunt. He was</p>

	<p>reluctant about it at first, but now admits that it was very successful. He thanked the Commission for the hunt. He expressed concern for misuse of the crossbow program. He begged the Commission not to legalize the crossbow.</p>
<p>Rich Thompson Newberg, OR</p>	<p>Rich Thompson, Traditional Archers of Oregon (TAO), distributed written testimony. He said TAO and OHA did a fine job and guided us through the process. The current regulations are a good fit for the unique game management issues Oregon is facing - predators and burgeoning white-tail herds (they want these animals dead). He included a personal written statement on lighted nocks and cameras. He said TAO urged ODFW to maintain current archery equipment regulations and would like to go on record as advising ODFW that such a cookie cutter approach to regulations will result in never-ending work in progress as the archery industry exploits new technology to eliminate the defenses of the prey. "No crossbows from TAO."</p> <p>Commissioner Webber asked, if we legalize crossbows in rifle season, would that cause you any grief? Thompson said he was okay with that.</p> <p>Commissioner Englund asked him for his opinion of lighted nocks. Rich said the regulations are pretty clear about lighted nocks, but it is a slippery slope. It all goes into a high tech realm; hunters' confidence is boosted and they feel they can stretch things further than they should.</p>
<p>Craig Starr Lebanon, OR</p>	<p>Craig Starr, President of Wapiti Bowmen and Oregon Bow Hunters (OBH), distributed written testimony. He has been involved in the process for a year, but isn't encouraged. He's heard that ODFW is biased against bow hunters but doesn't believe that; a lot of actions have been taken that result in bias against bow hunters. There are about 1,200 white tail deer firearms tags in Oregon, but not one bow tag. We made a modest proposal, which got no consideration. Hunting restrictions, when needed, should occur equitably on all categories of hunters. It's time that you apply the recommendations from the Archery Review Advisory Committee; make reductions equitable across the board; don't focus in on just the archery hunters.</p> <p>Chair Rae asked him for his thoughts on crossbows. Starr said "me too" as far as what Mr. Doran said. OBH's believes that crossbows should not be used during regular</p>

	<p>archery seasons; would be less concern if they were available for use during rifle season, or if they had their own season. Providing disabled hunters an opportunity to hunt is good. He is concerned that putting them in during archery season, if the result of getting them in there is bad, getting them out would be hell to pay. There are lots of other groups that could claim special dispensation, such as women and elderly people.</p> <p>Commissioner Edge asked Starr to comment on the proposal to allow bows during rifle season. Starr said OBH suggested that for youth hunts and during rifle damage hunts. That is a partial step; it doesn't deal with the whole issue. Opening it up for general rifle and deer won't do much.</p>
<p>Chuck Lynde LaPine, OR</p>	<p>Chuck Lynde, a bow hunter since 1949, said most everything has been covered here today. Before 1978 bow hunters only had two units. Then he and a number of others set up a meeting and talked about opening the whole state. The goal was to bring people into archery but to keep it primitive. That has not been the case lately, due to manufacturers – the evil is the money. He held up a picture of an average bow and a picture of a crossbow. They do not look alike. He is not against crossbows, but they just do not belong with archery.</p> <p>Commissioner Webber asked if he had any problem with crossbows during rifle season. Lynde said he wouldn't like to see that; it would be better with rifles than with bows.</p>
<p>Rick Gabbard Bend, OR</p>	<p>Rick Gabbard testified against crossbows during archery season. He's a bow hunter who lost his arm 10-years ago and everyone said he'd never shoot a bow again. If handicapped people enjoy archery, they'll figure it out. He is a successful bow hunter again, and will not look to contaminate the sport he loves. He was shot through the lungs during rifle season and survived; had it been a crossbow he would not have survived. He would just assume not to be in the same woods with crossbow hunters.</p>
<p>John Stone Lebanon, OR</p>	<p>John Stone testified against crossbows, and said cameras don't work. People who use them are basically rifle hunters who don't have a clue. You're going to spend \$300-400; they didn't work in Texas either. With crossbows if you put them in rifle season you're going to have problem with poachers – you can't hear them. And</p>

	how many people are going to have the tracking skills to follow those animals?
Bob McMahan Bend, OR	Bob McMahan, a bow hunter for 35 years and member of TAO Board of Directors, said the early primitive archery seasons were chosen to increase our recreational hours, and had no real effect on the game population. Now with this rush toward technology, that is disappearing. He asked the Commission to think about dividing the sport into high tech individuals and low-tech traditional people; as outlined in TAO's proposal. The issue of lighted cameras is a slippery slope and is inappropriate. In Eastern states where mule deer are prolific, it is different. He said "me too."
Jason Gillette Bend, OR	Jason Gillette said "me too" on the safety issues related to crossbow usage, and to the poaching issues. He said: 1) If crossbows are allowed during archery, more stores will sell them, and more people will purchase them assuming that they are legal. He asked if wording will be adopted restricting the use and possession of crossbows. 2) There is a push for crossbows from rifle hunters who don't draw their archery tags. They should be required to declare archery or rifle when they apply for their tags.

1
2 Chair Rae asked the Commission for their comments.
3
4 Commissioner Edge asked how many disabled bow hunters there are who might be
5 interested in disability crossbow opportunities. Thornton said out of fewer than 6,000
6 total permits, about 700 have permanent physical disabilities. Many of them don't hunt
7 during archery season. Commissioner Edge asked if the disability program, as it is
8 currently envisioned, would allow for the adaptive equipment as discussed earlier.
9 Thornton said yes; we issue about 20 permits per year. Commissioner Edge asked if the
10 use of bows during rifle season is an extension of the current archery season, or could a
11 person who draws a rifle tag use a bow instead. Thornton said they would purchase a
12 rifle tag and hunt only during that season.
13
14 Commissioner Kerns disclosed that he was a member of TAO. He is willing to vote for
15 cameras and lighted nocks because they really don't make much difference. He does
16 oppose use of a crossbow. It does take more than one person to manipulate them if
17 they're disabled; it presents a bad image for the sport of archery.
18
19 Commissioner Webber said this is a real black and white line now; to go to lighted nocks
20 and cameras, any kind of electronics, starts to blur that line. He wouldn't support those.
21 The crossbows, obviously from my questions, I was thinking about how they would work
22 in rifle season, and I'm not sure. He was opposed to crossbows under any

1 circumstances in archery season. Whether they are allowed in rifle season, I could go
2 either way on that.

3
4 Commissioner Levy said quite a few members of her family hunt with bow and arrow;
5 they used to be rifle hunters. They felt that if the Commission gave them the option of
6 using cameras and lighted nocks it would again take the sport farther away from being a
7 sport. She agrees with that and likes leaving it the way it is right now.

8
9 Commissioner Klarquist didn't see where, in the proposed regulations, the change to
10 define the crossbow special use permits. Thornton said staff is still working on that
11 permit with the U.S. Fish & Wildlife Service (USFWS) ADA specialist. Commissioner
12 Klarquist asked, so we look at that if this goes forward. Thornton said right, I put down
13 some of the aspects to let folks know that, if approved, it would be very limited.

14
15 Commissioner Englund agreed with leaving the archery more traditional and not allowing
16 the nocks, cameras and crossbows. He opposed allowing the crossbow during rifle
17 season for the potential that could exist. He had no problem with the Sports Pac, but
18 would choose to eliminate the other two.

19
20 Chair Rae asked, for camera and light nocks what the equivalent in a rifle weapon is. We
21 don't allow lights on rifles because hunting with rifles is not allowed after dark.

22 Commissioner Klarquist said tracers are allowed. Chair Rae asked, would that be the
23 equivalent. Thornton said yes, a tracer probably would in some ways be equivalent to a
24 lightednock. We do have scopes that emit a beam to the target; like a laser sight or
25 scopes that incorporate a laser range finder. Those are not legal in Oregon because of
26 our restriction on a scope that omits a beam.

27
28 Chair Rae said, what about cameras? Thornton said there are no restrictions on
29 cameras. He agreed with some of the testimony that there are alternatives. But some of
30 the folks who asked for these wanted the camera on the bow so they could actually use
31 it reversed, and look at the hunter while this was going on. They can't do that with ones
32 mounted on their heads.

33
34 Chair Rae said she was hearing little to no support for crossbows in either bow or rifle
35 season. She thanked Commissioner Webber for flushing that out. She was not hearing a
36 majority in support on further technology advances with cameras or lighted nocks. She
37 asked Legal Counsel Bill Cook to clean up the Administrative Rules during the lunch
38 hour. She informed the public who needed to leave that there wouldn't be any changes
39 to the rules over the lunch hour from the discussion here. The Commission will come
40 back after lunch and make certain that our Administrative Rules are consistent, because
41 they're not right now, and then will take final action once these rules are complete. She
42 said the staff recommendations on all of the other matters, as presented by Thornton,
43 will be accepted - except for the issue on cameras, light nocks on bows and clearly no
44 crossbows.

45 46 **Top Hunter Education Awards**

47 Chair Rae presented the Distinguished Hunter Education Instructor Award to Thomas

1 Widman and Wayne Stocks. She said Stocks, from McMinnville, is the area coordinator
2 for Yamhill County. He is active in conferences and program activities, and has taught
3 over 50 classes and is active with the Portland Sports Show. He was certified in 1988 as
4 a Hunter Education Instructor. Chair Rae said Widman, from Tigard, is the assistant
5 area coordinator in Washington County. He is active in Portland Sportsman Show and
6 has taught over 30 classes. He was certified in 1995. Chair Rae presented Widman and
7 Stock with "Continuing the Heritage" prints signed by her and Director Elicker.
8

9 James Reed, Statewide Education Coordinator, commended Stocks and Widman for the
10 excellent work they have done. He acknowledged eight other individuals who reached
11 this level this year. Chair Rae said they are Theresa Cotton, David Jarschke, Ralph
12 Klein, Chuck Boatman, James Hunt, William Polly, Emmett Walker and Todd Burk.
13

14 The Commission recessed for lunch at 12:05 p.m., and reconvened at 1:02 p.m.
15

16 Chair Rae announced that the Commission must be out of the room by 5:00 p.m.
17 Because of the number of people who have signed up to testify on these issues, we are
18 not going to get through the entire agenda in the next four hours. She proposed that the
19 Commission complete its work on the 2011 Big Game Regulations, and then take up
20 Hunter Orange and Sage Grouse. Tomorrow we will take up the Wolf Conservation and
21 Management Plan (Wolf Plan) and make a decision then. For those individuals who
22 cannot be here for the Wolf Plan tomorrow, we will take your testimony today.
23

24 **Exhibit B: 2011 Oregon Big Game Regulations – continued**

25 Chair Rae said the Commission did not wish to see changes in the regulations related to
26 technology advances. Is there further discussion? Hearing none, she said staff modified
27 the proposed Administrative Rules accordingly and she asked for a motion.
28

29 *Action: Commissioner Edge moved to amend OAR Chapter 635, Divisions 008,
30 010, 045, 060, 065, 066, 067, 068, 069, 070, 071, 072, 073, 075 and 080
31 as proposed by staff, and to adopt the document entitled "2011 Oregon Big Game
32 Regulations" as proposed by staff with three exceptions 1) concerning lighted
33 nocks; 2) concerning cameras on bows; and 3) concerning crossbows. "As
34 proposed by staff" includes supplemental amendments seen on two new versions
35 of Attachment 5 (dated September 27, 2010 and September 30, 2010) where
36 those supplemental versions address the same rule the September 30 version
37 governs. Commissioner Levy seconded the motion.
38*

39 Chair Rae asked for discussion. Commissioner Klarquist clarified that the effect is to
40 delete the proposed changes affecting crossbows and, as Commissioner Englund said,
41 as well as the ability for crossbows to be in the rifle season. Chair Rae said yes on both.
42

43 *Chair Rae took an oral vote and the motion carried unanimously.*
44

45 **Exhibit C: HUNTER ORANGE**

46 Chris Willard, Education Services Manager, presented rulemaking language for
47 mandatory wearing of Hunter Orange (HO). Currently it is voluntary in Oregon. At the

1 June Commission meeting, staff reported on whether making HO mandatory would make
 2 hunting safer in Oregon. There were five options for rulemaking. After reviewing the
 3 report and listening to public testimony, the Commission narrowed those options from
 4 five to three. He presented rulemaking language for the three remaining options.

- 5 1) No action; wearing HO would remain voluntary.
- 6 2) Require wearing HO upper garment and hat for hunters younger than age18 for
 7 hunting game birds except for turkeys. Upper garment is shirt, jacket, coat, vest or
 8 sweater. Hat means any head covering. HO camouflage patterns would be
 9 acceptable.
- 10 3) Require wearing HO upper garment *or* hat. All hunters except for turkey, with
 11 center fire arm or shotgun. Provides for less visibility for juvenile hunters as
 12 compared with option #2.

13
 14 Willard summarized the Hunter Orange Report: hunting in Oregon is safe, even
 15 compared to states where HO is required. Fifty percent of all Oregon hunting-related
 16 incidents, and 66% of hunting-related fatalities, can be classified as being “vision related”
 17 incidents. Forty states have regulations geared toward reducing vision-related incidents.
 18 Willard said HO would not reduce non-vision-related hunting incidents. In Oregon, the
 19 majority of vision-related hunting incidents occur while hunting big game and upland
 20 game birds, using center fire arms and shotguns. With the exception of turkey and
 21 waterfowl hunting, wearing HO would not reduce hunter success. Willard said, if rules
 22 are adopted today, they would take effect August 1, 2011.

23
 24 **Public Testimony:**

<p>Jeff Mornarich Roseburg, OR</p>	<p>Jeff Mornarich, attorney and avid hunter, is a firm believer in the benefits of HO. He distributed written testimony and asked the Commission to <i>not</i> adopt a mandatory HO program for Oregon. In the early 1990s the State of Oregon crossed a solid line by making seatbelts mandatory. We have been sliding down a steep slope since. I choose to wear HO, but I don't want Big Brother telling me I have to. He said the state of Oregon is out of money; yet, we're going to adopt a new rule in this economic environment. The role of government in Oregon has gone too far. They are trying to protect us from ourselves. Get back to the fundamental purposes of government.</p>
<p>Harold Laird Florence, OR</p>	<p>Harold Laird, President of Siuslaw Chapter of OHA, said his members agree with the State Board - choose Option 1. He referred to testimony given in June and asked, why are we still on this subject? I don't think you really understand what these people are saying to you. I've been a hunter since I was old enough to pick up a slingshot. When I hunted I always wore red, orange or bright yellow. I've been shot at 3 or 4 times. When I've worn camouflage I've never been shot at because they can't see me. I hunt with common sense. My grandchildren are hunting with me this week-</p>

	<p>end and they are going to wear HO. We don't need you to tell us what to wear; we don't need more regulations. People have accidents all the time, and this is a fact of life; HO won't change it.</p>
<p>Craig Starr Lebanon, OR</p>	<p>Craig Starr, representing himself, said he attended the past three meetings, where 98 to 100% of attendees opposed HO. As a bow hunter and with regard to the regulations, if he were out there in bow hunting season and wearing a center fire pistol on his hip, he would be required to wear HO if hunting bear or cougar. He thinks that's nuts. He's opposed to HO being applied when hunting cougar or bear.</p>
<p>Joe Ricker Salem, OR</p>	<p>Joe Ricker, Midwest Director of OHA, said the subject is mistitled; it should be "Blaze Orange". He's hunted all his life and never seen a man that looked like wild game. He's never pointed a firearm at an item until he knew what it was. If everyone followed this simple rule, then this discussion would be mute. The tragedies in Oregon do not justify mandatory HO. He's just as concerned about non-hunters who are recreational users. He supports Option 1. Also, staff didn't exempt predator hunting; they just said all forms of hunting are required except a couple.</p>
<p>Ron Poole Klamath Falls, OR</p>	<p>Ron Poole said in 1948 his dad gave him a Model 94 and a red coat. Today he hunts with a 300-mag and a red coat. He supports the voluntary use of HO.</p>
<p>Marcey Fullerton Coos Bay, OR</p>	<p>Marcey Fullerton, a Hunter Education instructor for 19 years, has seen the number of hunting related incidents drop, and believes it's directly related to the Hunter Education Program. We need to reach adults who would benefit from taking hunter education in this state. Hunter Orange won't prevent careless mistakes. We need to educate, not mandate.</p>
<p>Frank Hupp Columbia City, OR</p>	<p>Frank Hupp, President of Columbia County Chapter of OHA and a native Oregonian and disabled hunter, started hunting with his dad when he was 7 years old. The only time he's been shot at was when he was wearing Blaze Orange. He represents over 300 hunters; 93% favor Option 1; remaining 7% favor Option 2. OHA encourages Option 1. He's a firm believer that wearing HO should be their option based upon their judgment.</p>
<p>Ken Hand Klamath Falls, OR</p>	<p>Ken Hand, Regional Director of Mule Deer Foundation, said "me too" following Mr. Hupp's testimony.</p>

<p>Al Elkins</p>	<p>Al Elkins, for Oregon Hunters Association, said OHA supports Option 1. OHA has a formal written policy which states that it does not support mandating use of Blaze Orange, but does support the voluntary use. Their current OHA poll of 1,000 members showed over 70% opposed mandatory orange. Their online poll was running 75% opposed. We believe this to be an issue of personal choice.</p>
<p>Andy Chester Coquille, OR</p>	<p>Andy Chester said “me too”. He revisited one proposal having to do with hunter safety and said he found it odd that nobody mentioned the overlap of bow hunting and rifle hunting. Do you realize how unsafe that is for the bow hunter? Chair Rae said the Commission had a lot of testimony on that topic in June. Chester said he’s trying to compare the HO decision to the 2011 Big Game proposal. That’s a much bigger issue than HO. He agreed that the role of government has gone too far.</p>
<p>Richard Haines Baker City, OR</p>	<p>Richard Haines said not “me too”. He’s a career wildlife biologist and Hunter Education instructor. Safety is an important thing to think about always. He noted a recent archery accident that was a fatality. He’s here for two reasons: 1) he’s invested his life in youth; and 2) demographics of future hunters are down to less than five percent. He believes that 95% of the population is not hunting due in part to safety concerns. He recommends Option 3. The question is how to re-engage citizens in hunting; safety plays a key role. Most his students believe HO is already mandatory; they think it is very important.</p>
<p>Rory Shelby Bend, OR</p>	<p>Rory Shelby a lifetime Oregonian and hunter said “me too”. He agreed about education. He talked about an experience while hunting, he saw many people in the areas who were not educated in hunting. He gave an example of a woman from another state that was standing in line to get a hunting tag. We sell a lot of tags to uneducated people, some who come from out-of-state. He agrees with Option 1.</p> <p>Chair Rae asked Shelby what the Commission should do about the lady who’d never hunted in Oregon before. He said hunter safety education. Chair Rae asked if he would mandate it. Shelby said yes, he would figure out a way.</p>
<p>Rich Thompson Newberg, OR</p>	<p>Rich Thompson said Archery Hunters of Oregon (TAO) supports Option 1. Let good common sense prevail.</p>

<p>Hedge Jarvis Winchester, OR</p>	<p>Hedge Jarvis, President of Oregon Hunter Education Instructors Association (OHEIA), distributed written testimony. He agreed that hunting in Oregon is safe; one reason is the instructors. He surveyed 100 instructors:</p> <ul style="list-style-type: none"> • 31% supported Option 1; • 6% choose Option 2; • 54% choose Option 3; and • 9% chose Options 4 and 5, no longer being considered. <p>He said 69% of respondents believe HO is beneficial in reducing vision-related accidents. The OHEIA Board supports Option 3, which is least intrusive to the hunter but from a safety standpoint addresses all age groups mentioned in the draft study.</p>
<p>Jason Gillette Bend, OR</p>	<p>Jason Gillette said “me too”. According to ODFW, Summary of Hunter Related Firearms Incidents from 1990 to 2009, a percentage could have been prevented by the wearing of HO. However large that percentage may be, if we trace this back to the fundamental hunter judgment mistakes that led to these incidents, all of them could have been prevented with proper hunting education. HO shifts the responsibility from the person behind the trigger to the person who is being targeted. We need mandated Hunter Education; or we’re going to see more of these accidents.</p>
<p>Larry Scon Redmond, OR</p>	<p>Chair Rae said Larry Scon had signed up but had to leave. He encouraged the Commission to vote “no”.</p>
<p>Mark Wilcox Fort Klamath, OR</p>	<p>Mark Wilcox is a licensing agent and owner of a general store. He supports “no” on mandated HO because most of us have been able to dress ourselves over the last 50 years and we really don’t need someone helping us.</p>
<p>Matt Carey Bend, OR</p>	<p>Matt Carey hunts with his two sons. He asked if his hat (he was wearing) would be legal if HO were voted for today. Chair Rae said she does not know whether his hat would be legal or not. Carey’s point is that this will be part of the confusion. It gets harder and harder to know if you’re complying with the law.</p>
<p>Wayne Stocks McMinnville, OR</p>	<p>Wayne Stocks said folks had testified that they had hunted for 40 years. Population and hunting opportunities have increased, and people travel more. He is a Mentored Youth Hunt follower. As a community we cannot allow hunting practices to continue that are dangerous to our youth. Eighty-eight percent of the public don’t care if we hunt or not. Youth are being killed because they are being mistaken</p>

	for game; that is a visual issue. He favors Option 2.
Bruce Argo Roseburg, OR	Bruce Argo said it should be up to the parents to what their children wear. I shouldn't be told what to wear or what my children should wear. He's a firm believer in Hunter Safety; he and his children attended but it shouldn't be regulated. Don't try to protect me from myself; let me worry about my child. Listen to what the majority say - you can't regulate every individual person. Even if you put us all in HO there will still be incidents. He is a member of Umpqua Houndsmen, which is disbanding because they are no longer permitted to run their hounds.
Jess Messner Powell Butte, OR	Jess Messner said at some point we have to be responsible for ourselves. HO will keep people away from hunting. This isn't going to help our situation. I say "me too" to most of what everybody else has said here.
Galord McLamb Prineville, OR	Galord McLamb said he was one of the OHA founders in 1979-80. He's hunted in most states and has worn HO as required. Animals are color blind. He's now a dedicated bow hunter. HO should be an option to the individual. He supports hunter safety education to young hunters up to age 18, and said parents should have their children wear HO. We're going to lose more hunters and not because they're afraid of being shot, but because of the decrease in wildlife. McLamb offered to send the Commission copies of his information on the Website. Chair Rae noted it for the record. Commissioner Levy asked McLamb to state his position. McLamb said HO shouldn't be mandatory; it should be optional.

- 1
- 2 Chair Rae called Chris Willard to come forward and answer questions.
- 3
- 4 Commissioner Klarquist said noted one change to the Big Game regulations to allow
- 5 hunting with a bow during rifle season. The proposed HO regulations only require a
- 6 person who carries a firearm to wear it. Would you include bow hunters? Willard said we
- 7 have overlapping rifle hunters and bow hunters through the hunting season. Over the
- 8 past 20 years there has never been a situation where an archer has shot a rifle hunter;
- 9 so the work group did not include bow hunters. Commissioner Klarquist said if we put the
- 10 bow hunter out there we're not protecting the rifle hunters from the bow hunter, we're
- 11 protecting the bow hunter from everyone else. That's different logic from your working
- 12 group. Willard said we looked at hunter density numbers in June; specifically the High
- 13 Cascade Rifle Hunt with the highest number of rifle hunters overlapping with archery

1 hunters. This is a situation that we'd probably want to monitor and see if there is a
2 reason to revisit the HO issue, should one of these options be considered. Klarquist said,
3 so bow hunters are expendable.

4
5 Commissioner Webber asked if, under the same logic, ODFW staff out in the field is
6 expendable. If HO is a safety issue, why wouldn't we want our people wearing it?
7 Willard said field staff has been encouraged to wear HO; we have orange uniform items
8 including shirts and hats.

9
10 Chair Rae asked Director Elicker to respond to Commissioner Webber's question.
11 Director Elicker said ODFW has not made it mandatory in the field because sometimes
12 staff is working with OSP and needs to remain unobserved; thus, the request for the
13 exception. (See Attachment 4, subparagraph (a) under Option #2).

14
15 Commissioner Klarquist noted the writers and testifiers who emphasized education. We
16 have a good safety record. Was the HO working group charged to consider mandatory
17 education for all hunters? Should we have that instead of mandatory orange?

18
19 Director Elicker said that is a very important policy question. The Commission did not ask
20 us to look at that question, but we are prepared to do so if directed. It would mean more
21 cost and expense, as well as more volunteers to accomplish. With use of the Internet,
22 staff could accomplish that. The down side is that it cuts further into recruitment and
23 retention of hunters; that's why we've gone to the mentor system.

24
25 Chair Rae said she was reluctant to send staff onto additional research for mandatory
26 hunter education for grown-ups. We already struggle for the resources and have spent a
27 fair amount on this issue; this was a Commission-driven request following the tragic
28 death in Polk County. This discussion has answered our questions. Willard and others
29 have done a remarkable job answering our questions. Oregon is among the safest
30 states. We asked the hunters to weigh in and they weren't shy about telling us. Some of
31 the early generation hunters were more adamant in their opposition to HO. Some youth
32 thought it was already mandatory. The Hunter Education Instructors support teaching
33 and preaching to the youngsters to wear some form of HO.

34
35 Chair Rae supported Option 2 in order to reach the younger generation and instill that
36 into them, so we don't have to be so concerned in the future about tragic accidents.

37
38 Commissioner Edge asked if Willard's report suggests that Hunter Education is not
39 particularly effective in preventing vision-related accidents. Willard said half of all vision-
40 related shooters had not taken Hunter Education. Commissioner Edge said data is clear
41 that HO saves lives - he supports Option 3.

42
43 Commissioner Kerns has always worn some form of HO when hunting, but feels it
44 should be voluntary and not mandatory. The vast majority of people who contacted him
45 already wear HO; don't make it mandatory. He spoke to an OSP officer in Pendleton who
46 said wearing HO would not have made a difference in any of the accidents he
47 investigated. Kerns supports Option 1.

1
2 Commissioner Englund agreed, to a point, that there are too many mandatory issues.
3 His grandchildren are going through Hunter Education. He supports Option 2. He
4 commended the hunting public for their safety record.

5
6 Commissioner Klarquist said we hunters are all human and we all make mistakes. I
7 choose to wear HO and I don't want to be a victim of other hunters. I brought my sons to
8 Hunter Education classes. Safety is a matter of being educated. HO helps me avoid
9 being a victim of other people's ignorance or carelessness. He has no reluctance
10 whatsoever about protecting the children. He favors Option 2, but asked whether "either
11 or "(hat/vest) might make sense.

12
13 Commissioner Levy supports Option 2, but for different reasons. As a child in the middle
14 of a potato harvest, two pheasant hunters came onto their field. One hunter shot the
15 other out of sheer stupidity. Also, she objects to schools taking on the role of parents.

16
17 Commissioner Webber said he viewed this issue as an age group. My dad made sure I
18 had my red hat and shirt. After Vietnam came camouflage with the assumption that the
19 deer couldn't see it. He supports Option 2 with the hope that the younger generation will
20 continue using it on into the future.

21
22 Chair Rae said by the declarations, a majority of the Commission support Option 2.

23
24 Commissioner Kerns said he was willing to compromise and would support Option 2.
25 Commissioner Edge said he would support Option 2.

26
27 Chair Rae referred to Attachment 4. We asked Counsel to prepare language for either
28 Option 2 or Option 3. Right now we are focused only on Option 2 in Draft 635-065-0012:
29 "No person younger than 18 years of age shall hunt with any firearm any game mammal
30 or upland game bird (excluding turkey) unless the person is wearing in a manner visible
31 from all directions a hat and exterior garment of fluorescent orange." The discussion that
32 we had here was, is that really "**and**" or should it be "**or**"? She noted that previously in
33 Options #4 and #5 when it was mandatory for everyone, it was "or".

34
35 Willard said it was in fact suppose to be "**and**". It was the working group's thought
36 process that for 17-years of age or younger you would want maximum visibility.

37
38 Chair Rae said the way the language is drafted; children would have to wear a hat "**and**"
39 an exterior garment, as opposed to a hat "**or**" an exterior garment.

40
41 Commissioner Webber said it should be "**or**" and not "**and**". Commissioner Levy
42 supported "**or**". Commissioner Kerns preferred "**or**", and asked to include the word
43 "**pants**" under the definition of exterior garments. Commissioner Edge said he would
44 prefer "**and**". Commissioner Englund said he could go either way, but preferred "**or**".

45
46 Commissioner Englund asked if the draft includes the number of square inches of HO
47 that would be required. Willard said many states require minimum square inches,

1 particularly 400-inches in the case of vests only, or 500-inches in case of vest and hat.
2 Our work group wanted our recommendations to be easy to understand and easy to
3 enforce, and so did not include square inch language.
4

5 Chair Rae asked Lt. Andy Heider, if the wording for “either/or” is adopted and doesn’t
6 contain language on minimum square inches, how would you put the word out to the
7 troops statewide to enforce this for youth? Lt. Andy Heider, OSP Wildlife Headquarters,
8 said if it is an “or” and long as the attempt is there with the HO hat or garment, we would
9 be okay with it. Chair Rae said, keeping in mind that whatever is acted upon today does
10 not go into effect until August 2011, is there any clarification that you (Director Elicker or
11 Willard) want?
12

13 Director Elicker said if the direction from the Commission is Option 2, but they are
14 concerned about hat or garment or both, we could look at that for our final rule and bring
15 it back to the Commission in a month.
16

17 Counselor Bill Cook said that was okay.
18

19 Eric Rickerson said in order to get this into the 2011 Big Game Regulations we need to
20 have it finalized by the beginning of November. We’re not meeting again until December.
21

22 Commissioner Webber read from Attachment 4 under Option #2, “unless the person is
23 wearing in a manner visible from all directions a hat or exterior garment”, and said I think
24 that pretty well covers it, because you’re saying it has to be something that somebody
25 else can see. I think OSP can enforce that.
26

27 Chair Rae said so visible from all directions would take care of the crown versus the bill
28 versus the stitching.
29

30 Director Elicker said we can adopt Option 2 now, “hat *and* garment”, or we can redefine
31 garment to include pants, or go with “hat *or* garment”. It’s up to the Commission.
32

33 Lt. Andy Heider said his only concern with going to “or” is if kids are wearing a backpack.
34 Chair Rae said there is no backpack in exterior garment. Heider said correct, but the
35 issue is visibility from all directions. A backpack over your garment would mean you’re
36 not visible all over. Elicker said something has to be visible for 360-degrees. Simplest
37 way is to go with “or” wording like the wording in Option 3.
38

39 Chair Rae clarified that the document is *Attachment 4 – Draft Rules for Implementing*
40 *Mandatory Hunter Orange Option #2*. The only change would be in the third line down
41 that begins with “manner visible from all directions a hat “or” exterior garment of
42 fluorescent orange.” She said to Commissioner Kerns that she would like to encourage
43 on exterior garment to refer to upper torso rather than pants. Commissioner Kerns said
44 sometimes all you can see is the legs.
45

46 Chair Rae asked the Commission to comment with regard to include “pants”.
47

1 Commissioner Edge said no, as did Commissioners Englund, Klarquist, Levy and
2 Webber. Chair Rae said then no pants. She said in Attachment 4 – Option #2, at line 3
3 strike the word “and”, and inserting the word “or”. Chair Rae asked for a motion.
4

5 *Action: Commissioner Edge moved to adopt OAR 635-065-0012 as it relates to*
6 *Option 2 as shown in Attachment 4 with the exception of line 3, striking “and” and*
7 *replacing it with “or”. Commissioner Levy seconded the motion, and the motion*
8 *carried unanimously.*
9

10 The Commission recessed at 2:55 p.m., and reconvened at 3:08 p.m. Chair Rae asked
11 those that who traveled a long distance and cannot return tomorrow to notify Craig Ely.
12 She advanced to Exhibit E solely for the purpose of taking public testimony.
13

14 **Exhibit E: OREGON WOLF CONSERVATION & MANAGEMENT PLAN**

15 **Public Testimony**

16 Bill Hoyt Cottage Grove, OR	<p>Bill Hoyt, President of Oregon Cattlemen’s Association (OCA), submitted written testimony. He said the involvement of U.S. Wildlife Services (USWS) in identifying predation of wolves is going to be marginalized in the future. He thinks that is a big mistake because they are very familiar with the ground across the state. Also, we are struggling with funding. If you marginalize USWS in the Wolf Plan, we fear you will marginalize USWS in other areas, or people will perceive that they have been marginalized. We desperately need their services.</p> <p>Hoyt said with regard to compensation issues, Defenders of Wildlife (DW) has made it public that they will cease their compensation Plan by September 30, 2011. He cited an example of a rancher in Northeast Oregon with 390 cows. It cost him \$10,900 to move the cows to different pastures to avoid wolf depredation. He said OCA has introduced a compensation bill to the Oregon Legislature for 2011; he also understands the budgetary restrictions. He asked Commission to instruct the staff to assist in support of this legislation because they’ll have support by DW.</p> <p>Chair Rae said the Commission asked for OCA’s support three sessions ago and didn’t get it. Hoyt said that was his predecessor and all we can do is work with what’s on the ground today. There are legal wranglings going on in other states that will have an impact on agricultural economies.</p> <p>Sage grouse: Hoyt said they sent a letter to Director Elicker recommending changes. It adds language that improves cross referencing between sections of the Plan, to link</p>
-----------------------------------	---

	<p>Oregon's plan to plans in adjoining states. He acknowledges the historic issues of sage grouse, and said at some point, see what conditions existed that made them so prolific in the 1920s and 30s, and compare those conditions to today. He appreciates that the Plan isn't intended to exclude users or activities or infringe upon legally defined property rights. We need to make sure it's adequately funded so this bird does not reach the endangered species list.</p> <p>Commissioner Levy asked if OHA has asked Department of Agriculture for support. Hoyt said yes, and talked about legislation being drafted. He said OHA is asking other agencies for their help.</p>
<p>Fred Warner, Jr. Baker City, OR</p>	<p>Fred Warner, Chairman of Baker County Board of Commissioners, said the Board and Natural Resource Advisory Committee have extensively followed the wolf issue. They have concerns about the 2010 Wolf Plan and believe it is more of a conservation plan than a management plan. He asked the Commission to address the management of wolves; they are here to stay. So far, all depredations have been on private ground and there are not a lot of tools for private landowners. USWS should be the lead agency on depredation; ODFW should be involved also.</p> <p>Chair Rae thanked Warner for making the trip to Bend. Our expectation is that the various agencies be cooperative.</p> <p>Sage Grouse: Warner referred to Harney County Judge Steve Grasty's testimony and to the Counties' testimony. He said it was nice to have a professional like Christian Hagen, whose job is to protect the birds. He questioned the Board's belief that there is a need for expansion of the Plan. We don't believe there has been much net loss in sage grouse habitat. This will take away flexibility from BLM, USFS and private landowners. We need to stay flexible in this economy. Warner asked staff for data on how they came up with various conclusions. He asked staff to slow down so they can come up with a plan that works for all.</p>
<p>Asante Riverwind Bend, OR</p>	<p>Asante Riverwind, Conservation & Arts Director for Gaia Ki, and League of Wilderness Defenders, distributed written testimony. He said the Wolf Plan that was developed was a multi-year state project and shouldn't be tampered with lightly. If there are any substantive changes, we need to reconvene the stakeholder groups. There has been a lot of science that has documented wolf reintroduction, and we need to</p>

	<p>incorporate it into this Wolf Plan. When wolves are re-established into a new territory, they don't know where to go and how to sustain themselves. We're looking at projects that are taking wolves out of some of the most suitable habitat and disrupting the connectivity that they need. We need to see a program that provides for this. He supports a compensation program for ranchers. He asked the Commission to refrain from any substantive tampering of the Wolf Plan. He said USWS' trap record is abhorrent, which is one reason we have such a problem.</p> <p>Commissioner Edge asked if he or the groups he represents see any substantive change in the Wolf Plan as proposed. Also, will these groups help ODFW with a compensation bill for the Legislature? Riverwind said definitely we will help to draft a compensation bill or agreement. Concerning substantive changes, he submitted a 20-page document that addresses the changes in detail.</p>
<p>Josh Laughlin Eugene, OR</p>	<p>Josh Laughlin, Campaign Director of Cascadia Wildlands, submitted written comments on August 24 and oral comments on September 2 in Hillsboro. He touched briefly on some of staff's suggested changes.</p> <p>1) Language revisions: We continue to have discomfort with "in the area" concept when ODFW is dealing with chronic depredation issuing lethal control permits. The way it's written it will continue to remain an area of contention and continue to create agency distrust.</p> <p>2) Compensation program: ODFW and the public must continue to advocate that the Legislature create a fund to compensate ranchers for lost livestock. A flawed program could create conflict.</p> <p>3) Confirming depredations: Requires utmost professionalism, as it could lead to killing of endangered species. ODFW must be the lead agency. We've lost trust with USWS.</p> <p>4) Remaining proactive to reduce depredation: 21 confirmed wolves in Oregon right now.</p>
<p>Dan Kruse Eugene, OR</p>	<p>Dan Kruse, attorney for Cascadia Wildlands, works with Josh. He expressed concern that proposed language in the Wolf Plan was too vague. He discussed a proposed change in definition of livestock depredation: change "chronic livestock depredation" to "two depredations or one depredation and</p>

	three attempts in an area”. The rules as proposed would allow lethal removal of wolves in that area now—if and when the federal status of those wolves changes—because there is no time limitation. Lethal removal is the most extreme measure, and must not be used until other measures have been taken.
Bruce Taylor West Linn	Bruce Taylor, Defenders of Wildlife, said they support the Wolf Plan in its current form and appreciate ODFW’s work. We believe ODFW should retain the lead in confirming all depredations. We remain opposed to any reduction in population targets, although that’s not on the table at this time. More economic analysis is always good. We are happy to work with ODFW and OCA in a compensation program. Sage grouse: He said DW supports the Sage Grouse Plan.

1
2 Chair Rae said those are the individuals who needed to leave and travel home. She
3 moved to Exhibit D. She said it was 3:50 p.m., and that the Commission needed to be
4 out of the room by 5:00 p.m. We will not get through this today. She asked the audience
5 to let staff know if they won’t be here tomorrow. This is an informational briefing only.
6

7 **Exhibit D: GREATER SAGE GROUSE CONSERVATION ASSESSMENT AND**
8 **STRATEGY FOR OREGON**

9 Dr. Christian Hagen, Sage Grouse Conservation Coordinator, provided an informational
10 review on the Oregon Sage Grouse Conservation Assessment and Strategy planning
11 effort during his slide presentation: *Greater Sage Grouse Ecology and Conservation in*
12 *Oregon Updated Strategy 2010*. His report included information on:

- 13 • Background of sage-grouse.
- 14 • Oregon’s Updated Plan:
 - 15 ➤ Objectives, population and habitat.
 - 16 ➤ Relation to USFWS Endangered Species Act (ESA) finding.
 - 17 ➤ Core Area Recommendations: Identifies areas to avoid habitat loss and
 - 18 fragmentation.
- 19 • Public Process: 50 comments summarized in the Commission packet.
- 20 • Issues/Alternatives: Public comments: There were four general comments: 1)
- 21 Core areas are too restrictive; 2) “Development” is not defined; 3) Discussion of
- 22 climate change not included; and 4) Generalization of sage-grouse response to
- 23 energy projects.

24
25 Chair Rae asked Miel Corbett to give her report.

26
27 Miel Corbett, Assistant State Supervisor of Oregon State Office for U.S. Fish and Wildlife
28 Service (USFWS), offered to answer questions about potential federal listing of sage
29 grouse. Her duties include the administration of ESA Act in Oregon, as well as state and
30 private landowner issues, habitat restoration, coastal program and Forestry Resources
31 Division. She distributed written testimony and a one-page outline of the listing process
32 and overviewed its contents.

1
2 **The Listing Process.** Corbett said she was a member of the field management team
3 that looked at five listing factors that are threats:

- 4 1) Present or threatened destruction, modification, or curtailment of a species'
5 habitat or rang: fire; invasive species; energy development; and habitat
6 conversion due to agriculture, urbanization and grazing.
- 7 2) Overutilization for scientific, commercial or educational purposes; not significant.
- 8 3) Disease or predation. West Nile Virus is a lower level threat at this time.
- 9 4) Inadequacy of existing regulatory mechanisms; significant in our consideration.
10 USFWS supports strategies by WAFWA and other federal agencies.
- 11 5) Other natural or man-made factors including consideration of climate change. This
12 is a potential but not significant factor at this time.

13
14 **Candidate Species, Assessments and the Review Process.** Corbett said on March
15 10, the team identified sage grouse as a candidate species for the Endangered Species
16 list; however, USFWS does not have enough resources to go through regulatory
17 rulemaking at this time. The Greater Sage Grouse has a listing priority number of 8.
18 Currently there are 249 species, of which 166 have a greater priority number greater
19 than 8. Corbett said USFWS is undergoing litigation regarding sage grouse as a
20 candidate. USFWS reassesses the candidate status of a species each year.

21
22 **Policy for the Evaluation of Conservation Efforts.** Corbett said they use the *Policy*
23 *for the Evaluation of Conservation Efforts When Making Listing Decisions* (PECE policy)
24 when they evaluate conservation actions, and to determine the likelihood of mitigation.

25
26 **Service Perspectives on the Oregon Fish and Wildlife Strategy.** Corbett said
27 USFWS supports the use of core areas as a sound approach and the sound science
28 information used to develop the approach. Oregon's sage grouse populations represent
29 some of the more robust populations that exist in the range of the species, which makes
30 them very important to the range-wide survival and recovery of the species. The
31 components of the Oregon Strategy described in most detail are those focused on
32 minimizing ongoing adverse impacts to the species. USFWS recommendations are:

- 33 • Make conservation goals, performance standards and measures that would result
34 in the maintenance and enhancement of habitat and populations more explicit.
35 Efforts to strengthen this aspect of the strategy could focus on providing greater
36 certainty and specificity, regarding targets and methods for maintaining and
37 enhancing statewide populations and habitats, including increased population
38 protections for less stable populations.
- 39 • USFWS would value some specificity. We are concerned about whether the
40 proposed strategy will address the issue of adequate regulatory mechanisms. A
41 regulatory framework that would lead to a consistent and comprehensive
42 implementation of the strategy is not readily apparent in a voluntary basis, and
43 may not address the listing factor of inadequacy of regulatory mechanisms.
- 44 • Mitigation to offset the effect of unavoidable impacts is a critical emphasis of the
45 strategy; does not include a lot of discussion about types of appropriate mitigation
46 to guide projects and impacts as well as conservation strategies. Such an explicit

1 discussion would be very helpful for PECE when looking at evaluating the
2 effectiveness of the Oregon Strategy and its value to conserving Sage Grouse.

- 3 • The strategy might be improved by including recommended stages of tiered
4 iterative processes to help assess site-specific conditions, metrics, and methods.
5 Doing so would increase consistency, better form adaptive reassessment of
6 specific areas, and improve overall effectiveness and support for the strategy.
7

8 Chair Rae asked Corbett to explain that last recommendation. Corbett said there may
9 be areas where we would have a process to help us address site-specific conditions in
10 an iterative way. Maybe there are cases where “one size fits all” doesn’t fit; there’s
11 flexibility and the opportunity to address site-specific conditions in a tiered approach.
12

13 Corbett said USFWS offers these thoughts and recommendations in support of your
14 efforts. The strategy has substantial potential for effecting very positive outcomes with
15 respect to future ESA listings of the sage grouse in Oregon. The areas that I identified
16 are areas of remaining concern to USFWS. But with stronger provisions to reduce
17 habitat fragmentation and loss, and to provide regulatory certainty, the strategy could
18 serve as a foundation for reducing the regulatory impacts and any future ESA listing,
19 either by obviating the need to list, if such strategies were adopted across most of the
20 Western states. Or, if a listing were to go forward, by allowing for rulemaking, agreement
21 or recovery planning efforts that would essentially recognize and defer to the states and
22 the strategy for compliance would be up to the state. It’s a very valuable tool regardless
23 of the listing outcome. It does have the potential, however, to be recognized as a
24 considerable conservation effort and action, in light of a potential listing.
25

26 Chair Rae asked Corbett if she would be here tomorrow. Corbett preferred not to be.
27 Chair Rae said she had three individuals who must testify today. This item is only
28 informational today; there will be other opportunities for public testimony. She asked the
29 Commission if they had any questions.
30

31 Commissioner Edge referred to Corbett’s comments about parts of the plan being
32 inadequate, and wanted to be clear about the PECE process need for ongoing
33 monitoring. Are our monitoring plans sufficient? Corbett said yes. Commissioner Edge
34 said she had mentioned certainty and specificity from the standpoint of population and
35 habitat goals. Does this also include “temporal certainty”? Corbett is not sure, but would
36 like dates of when things are implemented.
37

38 Commissioner Edge asked about the core area approach being adopted in other
39 Western states. Corbett answered Wyoming and Montana; other states are in the
40 process of developing similar approaches. Commissioner Edge asked if the USFWS
41 review focused primarily on Category 1 habitats. Corbett said they looked at ODFW’s
42 use of Category 1 and 2. Commissioner Edge said we are proposing to allow quite a bit
43 more flexibility in Category 2 than in Category 1 habitats; both are somewhat contentious
44 at this time. If we were certain on protecting the Category 1 habitats, do we have some
45 more flexibility in Category 2? Corbett responded, you may.
46

1 Commissioner Levy talked about a Candidate Conservation Agreement with Assurances
 2 (CCAA). Colorado entered into such an agreement with USFWS, and had a part for
 3 landowners who signed a Certificate of Inclusion. How might that benefit Oregon and
 4 private landowners; would it be in addition to our conservation plan for the sage grouse,
 5 or in conjunction with it? Corbett said in conjunction with it. She said CCAA is an
 6 agreement that USFWS enters into with a nonfederal entity that outlines management
 7 actions and efforts that will be undertaken by the entity, to promote the conservation of
 8 the species. If the species becomes listed, folks that enter into that agreement would not
 9 be subject to additional regulation. We have been in discussion with ODFW about
 10 developing a statewide CCAA, and are in the process about developing one with BLM.
 11 Commissioner Levy said so if we entered into it and met all those requirements and then
 12 the sage grouse got listed, we wouldn't have to go further with any other actions?
 13 Corbett said that is correct.

14
 15 Commissioner Edge asked if would be a mistake to delay a decision in sage grouse
 16 conservation. Corbett said if you delayed your decision, we would not be able to evaluate
 17 any of the new actions that you are proposing. Commissioner Edge asked in the
 18 absence of a revised plan would USFWS perceive that as being adequate for their listing
 19 decision. Corbett said the 2005 Plan was fully taken into consideration during the last
 20 status review. Oregon has demonstrated some pretty substantial leadership in this
 21 arena, and she doesn't want to be perceived as minimizing their effort.

22
 23 Chair Rae said clearly we know a lot more today than we did in 2005. She heard in
 24 Corbett's testimony that it should be everyone's goal to do whatever we can to get the
 25 bird off the candidate list. Corbett said our goal is to not have species on the ESA.
 26 Therefore we support taking actions that would reduce the threat of a listing.

27
 28 Chair Rae said to Corbett we will see you again in December.

29
 30 **Public Testimony:**

John O'Keefe Adell, OR	John O'Keefe, Chair of OCA Public Land Committee and representative for private landowners on the Oregon State Sage Grouse Team, distributed written testimony. He committed to working with ODFW to create a plan that will prevent listing the species. What complicates this issue are forces that view the case law behind the ESA as a way to make landscape changes and landscape patterns in the West. That's what the cattlemen fear the most. We firmly believe we can raise cattle in the presence of a thriving population of sage grouse. He said the ranching community brings the following factors to the table: <ol style="list-style-type: none"> 1) Loss of open space; 2) Juniper encroachment; 3) Weed issue – invasive annual grasses; and 4) Fire.
Bob Sallinger	Bob Sallinger, Conservation Director of Audubon Society in

Portland, OR	Portland, distributed written testimony and said they don't want to miss this opportunity to avoid listing. They strongly support ODFW's work; build upon it but don't start over. He said to look further at: climate change; West Nile virus; livestock grazing and hunting. He's concerned that these are voluntary regulations, and concurs with USFWS that there needs to be a regulatory strategy. They would like to see agreements with private property owners. We think it important that ODFW work with the counties on their energy siting processes. Wind developers say this process is too restrictive and needs to be postponed. They want certainty in knowing where to avoid conflicts. We are developing the landscape at an unprecedented rate. He encouraged the Commission to adopt the Plan.
Garth Fuller Bend, OR	Garth Fuller, Director for Nature Conservancy of Eastern Oregon Conservation, said they manage 46 nature preserves working on fish and wildlife populations and have the support of 23,000 members. This Draft Plan is consistent with available science, and provides much needed clarification on the issues. Fuller likes the core area mapping. Being proactive now will make sage grouse recovery more successful. They recommend that the Commission accept the updated Strategy for Oregon, with the proposed additions in their submitted letter.

1
2 Chair Rae said the Commission would resume this discussion at their meeting tomorrow.

3
4 **ADJOURN**

5
6 Chair Rae recessed the meeting at 5:01 pm., and said it will resume at 8:00 a.m. on
7 Friday, October 1, 2010.